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14 UNITED STATES DISTRICT COURT  
15 TERRITORY OF GUAM  
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18 UNITED STATES OF AMERICA,	)	CIVIL CASE NO. 02-00022E
Plaintiff,	)	
19 V.	)	
20 GOVERNMENT OF GUAM,	)	CONSENT DECREE
Defendant.	)	
	)	

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1 WHEREAS, Plaintiff United States of America, on behalf of the United States  
2 Environmental Protection Agency ("US. EPA"), filed a civil lawsuit against the Government of  
3 Guam;

4 WHEREAS, the Government of Guam owns and operates a solid waste disposal  
5 facility in the Village of Ordot, hereinafter referred to as the "Ordot Dump;"

6 WHEREAS, the operation of the Ordot Dump is subject to, among other things,  
7 the provisions of the Clean Water Act, 33 U.S.C. § 1351-1387;

8 WHEREAS, 33 U.S.C. § 1311 (a) makes it unlawful to discharge pollutants from  
9 a point source to waters of the United States, except as authorized by a permit issued pursuant to  
10 33 U.S.C. § 1342;

11 WHEREAS, in the Complaint, the United States alleges that discharges from the  
12 Ordot Dump into the Lofit River constitute discharges of pollutants into a water of the United  
13 States and that such discharges are not authorized by a permit issued pursuant to 33 U.S.C.  
14 § 1342;

15 WHEREAS, pursuant to the authority in 33 U.S.C. § 1319, on July 24, 1990,  
16 U. S. EPA issued an administrative order to the Government of Guam Department of Public  
17 Works ("DPW") requiring the cessation of discharges in accordance with a plan and schedule to  
18 be submitted to and approved by U. S. EPA;

19 WHEREAS, pursuant to the authority in 33 U.S.C. § 1318(a), on September 19,  
20 1997, U. S. EPA requested DPW to obtain and submit to U. S. EPA certain data and information  
21 on the discharges from the Ordot Dump and the receiving water in accordance with specified  
22 deadlines;

23 WHEREAS, in the Complaint, the United States alleges that the Government of  
24 Guam did not comply with the terms and conditions of the administrative order and the request  
25 for information;

26 WHEREAS, Guam law, at 10 G.C.A. § 5118, provides for a financing source  
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1 from tipping and user fees for the Government of Guam costs and expenses directly related to the  
2 closure of Ordot Dump and the development, design, construction, and operation of a new  
3 sanitary landfill;

4 **WHEREAS**, the parties agree that settlement of the civil judicial claims as  
5 alleged in the Complaint is in the public interest and that entry of this Consent Decree without  
6 further litigation is the most appropriate way to resolve this action and avoid protracted litigation;

7 **THEREFORE**, based on the pleadings, before taking testimony or adjudicating  
8 any issue of fact or law, and without any finding or admission of liability against or by the  
9 Government of Guam;

10 **IT IS ORDERED, ADJUDGED, AND DECREED as follows:**

11 **I. JURISDICTION**

12 1. This Court has jurisdiction over the subject matter of this action and over the  
13 parties pursuant to 33U.S.C. 4 1319(b) and(d)and28U.S.C. \$5 1331,1345,and 1355. Venue  
14 isproperinthisCourt pursuantto28U.S.C. \$0 1391(b) and 1395(a) and33U.S.C. \$ 1319(b).

15 **11. PARTIES BOUND**

16 2. This Consent Decree shall apply and be binding upon the Government of Guam  
17 and its boards, directors, agencies, authorities, departments (including and not limited to DPW  
18 and the Guam Environmental Protection Agency ("GEPA")), and their successors and assigns,  
19 and on the United States on behalf of U.S. EPA.

20 3. The Government of Guam shall give written notice of this Consent Decree to any  
21 successor in interest prior to the transfer of any ownership interest or right to operate the Ordot  
22 Dump. The Government of Guam shall send a copy of such notification to U.S. EPA prior to  
23 such sale or transfer. Upon sale or transfer of the Ordot Dump, the Government of Guam shall  
24 attach a copy of this Consent Decree to the agreement which effects the sale or,transfer and shall  
25 make performance of the obligations of the Government of Guam under this Consent Decree an  
26 obligation of the purchaser or transferee. Transfer of ownership of the Ordot Dump will not

1 relieve the Government of Guam from the obligations of this Consent Decree.

2 4. Within TEN (10) days from the entry of this Consent Decree and as appropriate  
3 thereafter, the Government of Guam shall provide copies of this Consent Decree, accompanied  
4 by a summary explanation of its terms, to all persons who are bound by this Consent Decree as  
5 specified in Paragraph 2 or who are in a position to ensure or affect compliance with this Consent  
6 Decree, including notice to any successors in interest to property governed by this Consent  
7 Decree prior to the transfer of said property. The Government of Guam shall provide a copy of  
8 this Consent Decree to any contractor or consultant retained to perform any activity required by  
9 this Consent Decree. No later than TEN (10) days after any such notice, the Government of  
10 Guam shall provide U.S. EPA with a copy of its summary explanation and a list of the names,  
11 titles, and addresses of all recipients.

#### 12 **111. CIVIL PENALTY**

13 5. The Government of Guam shall pay a civil penalty of \$200,000 to the United  
14 States in accordance with Paragraph 6 below.

15 6. Payments shall be made by wire transfers payable to the United States Department  
16 of Justice in accordance with the FEDWIRE Electronic Funds Transfer instructions (forms  
17 attached as Appendix A) at the following times:

- 18 a. Thirty days after the effective date in the amount of \$25,000;
- 19 b. One (1) year after the effective date in the amount of \$50,000;
- 20 c. Two (2) years after the effective date in the amount of \$50,000; and
- 21 d. Three (3) years after the effective date in the amount of \$75,000.

#### 22 **IV. COMPLIANCE**

23 7. The Government of Guam shall correct all compliance problems that form the  
24 basis for the Complaint filed in this action by undertaking the actions identified below within the  
25 specified times. Unless otherwise specified, the times given in days refer to calendar days from  
26 the date of entry of this Consent Decree. U.S. EPA may, at its discretion, review documents

submitted by the Government of Guam concerning operation and closure of Ordot Dump and the construction or operation of the new Municipal Solid Waste Landfill ("MSWLF"). In the event that U.S. EPA provides written comments, the Government of Guam must respond in writing within 30 days and incorporate such comments into the document. Representatives of the Parties shall make themselves readily available during and after the comment period to informally discuss questions and comments on any documents.

a. For purposes of this Consent Decree, (i) "Ordot Dump" shall refer to Ordot Dump in its current configuration and current boundaries as depicted in Appendix B; and (ii) the new Municipal Solid Waste Landfill or "MSWLF" shall include the option of constructing and operating new cells at a location adjacent to the Ordot Dump location.

8. Closure of Ordot Dump and Cessation of Discharge of Pollutants from Ordot Dump into Waters of the United States.

a. Within 300 days (approximately 10 months), DPW shall:

1. Submit a Draft Closure Plan to U.S. EPA that shall include, but not be limited to:

- Site investigation, survey & mapping.
- Environmental baseline survey.
- 40% (conceptual) design of the dump cover system including methods and procedures to be used to install the cover system and operational plans to implement measures to cease discharge of pollutants into waters of the United States.

- 40% (conceptual) design of perimeter surface water diversion system.

- Other measures necessary to comply with Government of Guam regulations regarding closure of municipal solid waste landfills (22 G.A.R. 4 23601).

11. Submit a permit application to GEPA pursuant to Government of Guam

1 regulations (22 G.A.R. § 23104) for the disposal of municipal solid waste at Ordot

2 Dump until such time as the facility is closed and no longer accepts municipal  
3 solid waste for disposal. DPW shall provide a copy of this permit application to  
4 U.S. EPA at the time of submission.

5 b. Within 450 days (approximately 15 months), DPW shall:

6 1. Submit to U.S. EPA a 90% Draft Final Closure Plan that shall include, but  
7 not be limited to:

8 - 100% design of the dump cover system including methods and procedures  
9 to be used to install the cover system and operational plans to implement  
10 measures to cease discharge of pollutants into water of the United States.

11 - 100% design of the perimeter surface water diversion system.

12 - 100% post-closure care and monitoring plan.

13 - 40% Draft Specifications (including a Construction Management Plan)  
14 that describes the quality assurance measures necessary to ensure that the  
15 final dump closure system meets the design specifications.

16 Other measures necessary to comply with Government of Guam  
17 regulations regarding closure of municipal solid waste landfills (22 **G.A.R.**  
18 8 23601).

19 1l. Submit to U.S. EPA and GEPA a draft final plan and a schedule to  
20 implement post-closure requirements.

21 1 m. Submit to U. S. EPA a supplement to its original permit application to  
22 GEPA that includes complete information about closure plans, in compliance with  
23 Government of Guam Regulations (22 G.A.R. § 23104).

24 c. Within 570 days (approximately 19 months), DPW shall:

25 1. Submit to U.S. EPA a Final Closure Plan that shall include, but not be  
26 limited to:

1 100% design of the dump cover system including methods and procedures  
2 to be used to install the cover system and operational plans to implement  
3 measures to cease discharge of pollutants into waters of the United States.

4 100% design of the perimeter surface water diversion system.

5 - Final Specifications (including a Construction Management Plan) that  
6 describes the quality assurance measures necessary to ensure that the final  
7 dump closure system meets the design specifications.

8 Other measures necessary to comply with Government of Guam  
9 regulations regarding closure of municipal solid waste landfills (22 G.A.R.  
10 0 23601).

11 11. Submit to GEPA a final plan and schedule to implement post-closure  
12 requirements, in accordance with Government of Guam requirements. A copy  
13 shall be provided to U.S. EPA at the same time.

14 iii. Submit to GEPA, U.S. EPA, and U.S. Army Corps of Engineers a 90%  
15 Draft Wetland Mitigation Plan for closure of Ordot Dump. An approved Wetland  
16 Mitigation Plan, including a viable financial plan, shall be required before the  
17 issuance of any closure construction permits.

18 d. Within 570 days (approximately 19months), GEPA shall notify DPW and U.S.  
19 EPA of the adequacy of the solid waste permit application filed pursuant to Paragraph  
20 8(a)(ii) and 8(b)(iii) above in accordance with Government of Guam regulations (22  
21 G.A.R.923104(c)(2)).

22 e. Within 660 days (approximately 22 months), GEPA shall issue or deny a solid  
23 waste permit for the continued operation of Ordot Dump for a period not to extend  
24 beyond 1,350 days (approximately 45 months) after the entry of this Consent Decree and  
25 for the closure of Ordot Dump and provide a copy of the permit, including any  
26 conditions, or the denial to U.S. EPA.

1 f. Within 700 days (approximately 23 months), DPW shall advertise forbids to  
2 construct Ordot closure plans and specifications.

3 g. Within 800 days (approximately 27 months), DPW shall award a construction  
4 contract for Ordot Dump closure and provide a notice to proceed to the selected  
5 contractor and submit evidence of such award and notice to U.S. EPA.

6 h. Within 1,350 days (approximately 45 months), DPW shall complete closure of  
7 Ordot Dump, begin implementation of the post-closure plan in accordance with  
8 Government of Guam requirements, and submit a certification to U.S. EPA that  
9 the Ordot Dump no longer receives municipal solid waste for disposal.

10 I. Within 1,350 days (approximately 45 months), DPW shall cease all discharges to  
11 waters of the United States and submit a certification to U.S. EPA that discharges  
12 to waters of the United States from the Ordot Dump have ceased.

13 9. Construction and Operation of New Municipal Solid Waste Landfill ("MSWLF").

14 a. Within 30 days, DPW shall submit a list of at least three potential landfill sites to  
15 U.S. EPA and GEPA. Within 300 days (approximately 10 months), DPW shall complete  
16 an Environmental Impact Statement ("EIS") that includes a detailed analysis and  
17 comparison of at least three potential landfill sites for the MSWLF and identifies DPW's  
18 preferred alternative for the MSWLF. DPW shall provide U. S. EPA and GEPA with a  
19 copy of the draft and final EIS within 10 days after completion of the draft and final EIS.

20 b. If U.S. EPA does not agree with DPW's preferred alternative, the parties shall use  
21 their best efforts to come to an agreement regarding the location of the new MSWLF  
22 within 90 days after completion of the final EIS. If the parties are unable to agree on a  
23 location, the Government of Guam shall file a motion within 110 days after completion of  
24 the final EIS, submitting the disputed matter to the Court for resolution. The Government  
25 of Guam's motion shall request oral argument and shall be set for hearing not less than 45  
26 after service of the moving papers. The United States shall have 30 days to respond to  
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1 the Government of Guam's motion. The Court shall render a decision on the location of  
2 the new MSWLF based on the written materials on file and any oral argument.

3 c. Within 540 days (approximately 18 months), DPW shall submit a Draft Plan for  
4 the design, construction, and operation for the new MSWLF to U.S. EPA. The Draft  
5 Plan shall include but not be limited to:

- 6 - Site investigation, survey, and mapping.
- 7 - Hydrogeologic/subsurface investigation.
- 8 - 40% design and specifications for construction and operation of the new  
9 MSWLF system.
- 10 - Other measures necessary to comply with Government of Guam  
11 regulations regarding siting, design, and operational criteria for Municipal  
12 Solid Waste Landfills (22 G.A.R. 0 23601).

13 d. Within 725 days (approximately 24 months), DPW shall:

- 14 1. Submit a 90% Draft Final Plan for the design, construction, and operation  
15 for the new MSWLF to U.S. EPA. The Draft Final Plan shall include but  
16 not be limited to:
  - 17 - 100% design for construction and operation of the new MSWLF system.
  - 18 - Draft Specifications (including a Construction Management Plan) that  
19 describes the quality assurance measures necessary to ensure that the final  
20 new municipal solid waste landfill system meets the design specifications.
  - 21 - Other measures necessary to comply with Government of Guam  
22 regulations regarding siting, design, financial and operational criteria for  
23 Municipal Solid Waste Landfills (22 G.A.R. 4 23401).

24 n. Submit a permit application to GEPA in accordance with Government of  
25 Guam Regulations (22 G.A.R. 4 23104) to site, construct, and operate a  
26 new municipal solid waste disposal landfill in accordance with applicable  
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Guam and Federal regulations. A copy of the application shall also be submitted to U.S. EPA at the same time.

iii. Submit to GEPA, U.S. EPA, and U.S. Army Corps of Engineers a 90% Draft Wetland Mitigation Plan and submit a Wetland Development Permit application to the Guam Land Use Commission. Approval of the 100% Final Wetland Mitigation Plan, including a viable financial plan, and a Wetland Development Permit shall be required before the issuance of any landfill construction permits.

e. Within 845 days (approximately 28 months, which is 120 days after DPW's application is submitted), GEPA shall notify DPW and U. S. EPA of the adequacy of the permit application filed pursuant to Paragraph 9(d)(ii) above in accordance with Government of Guam Regulations (22 G. A.R. 8 23104(c)(2)).

f. Within 845 days (approximately 28 months), DPW shall:

1. Submit 100% Final Plan for the design, construction, and operation for the new MSWLF to U. S. EPA. The Final Plan shall include but not be limited to:

100% design for construction and operation of the new MSWLF system.

- Other measures necessary to comply with Government of Guam regulations regarding the design criteria for Municipal Solid Waste Landfill (22 G. A.R. 0 23401).

- Final Specifications (including a Construction Management Plan) that describes the quality assurance measures necessary to ensure that the final new municipal solid waste landfill system meets the design specifications.

11.. Advertise forbids to construct the new MSWLF.

g. Within 935 days (approximately 31 months), GEPA shall issue or deny a permit for the new MSWLF and provide a copy of the permit, including any conditions, or the

denial to U.S. **EPA**.

h. Within 975 days (approximately 32 months), DPW shall award a construction contract for the new MSWLF in accordance with applicable procurement rules and policies of the Government of Guam and provide a notice to proceed to the selected contractor and submit evidence of such award and notice to U.S. EPA.

1. Within 1,320 days (approximately 44 months), DPW shall begin operations of the new MSWLF and so certify to U.S. **EPA** within 7 days of commencement of operation.

10. Financing Closure of Ordot Dump and Construction and Operation of New Municipal Solid Waste Landfill.

a. Within 120 days, the Government of Guam shall submit to U. S. EPA a financial plan for funding those actions identified in Paragraphs 8 and 9, over time, including the funding source or sources and a schedule to secure funds for the capital and operating costs necessary to fully implement those actions identified in Paragraphs 8 and 9 above.

The parties acknowledge and agree that the total amount of funding needed to complete the projects required under this Consent Decree is not currently available. The parties agree that the projects shall be funded by the Solid Waste Operations Fund, established by 10 G.C.A. 4 51118, including the costs and expenses directly related to the closure of the Ordot Dump and the development, design, construction, and operation of a new sanitary landfill. The parties also agree that the Solid Waste Operations Fund shall not be regarded as the exclusive source of funding for the projects, and that the Government of Guam may obtain funding from other sources. The Government of Guam shall use its best efforts to obtain sufficient funding to fully implement the projects required by this Consent Decree. If funding from the Solid Waste Operations Fund is not sufficient to fully implement the projects, the Government of Guam shall seek funding through legislative appropriation, loans, grants, and rates charged for consumer services such as tipping or user fees.

b. Notwithstanding any of the time frames set forth in Paragraph 8 or 9 above, upon

the opening of a properly licensed and permitted municipal solid waste landfill prior to the times set forth in Paragraphs 8 and 9 above, no further dumping of any kind will be permitted at the Ordot Dump.

## **V. REPORTING REQUIREMENTS**

11. Beginning with the first quarter following the quarter in which this Consent Decree entered and continuing until termination of this Consent Decree, the Government of Guam shall submit to U.S. EPA written quarterly reports of its progress in implementing the provisions of this Consent Decree. Quarterly reports shall be submitted within twenty-one (21) days after the last day of each quarter. At a minimum, these Progress Reports shall include:

- a. All tasks required under the Consent Decree and performed during the reporting period;
- b. All deadlines in this Consent Decree that the Government of Guam was required to meet during the reporting period;
- c. A report whether the Government of Guam met these deadlines;
- d. The reasons for any failure to meet these deadlines and all steps taken to remedy such failure; and
- e. A projection of the tasks to be performed pursuant to this Consent Decree during the next reporting period.

## **VI. STIPULATED PENALTIES**

### **12. Stipulated Penalties.**

a. The Government of Guam shall pay stipulated penalties for failure to meet deadlines specified in Section IV (Compliance) as follows:

1. For failure to meet any of the deadlines specified in Paragraphs 8(a) - 8(f) and 9(a)-9(g):

- \$250 per day per violation for the first 30 days, \$500 per day per violation for the following 30 days, and \$ 1,000 per day per violation for each day

thereafter.

11. For failure to meet any of the deadlines specified in Paragraphs 8(g), 9(h), and 10:

\$500 per day per violation for the first 30 days, \$ 1,000 per day per violation for the following 30 days, and \$2,000 per day per violation for each day thereafter.

11L For failure to meet any of the deadlines specified in Paragraphs 8(h), 8(i), and 9(i):

- \$ 1,000 per day per violation for the first 30 days, \$2,000 per day per violation for the following 30 days, and \$5,000 per day per violation for each day thereafter.

b. The Government of Guam shall pay stipulated penalties in the amount of \$500 per day for failure to timely pay the civil penalty required by Section III.

c. The Government of Guam shall pay stipulated penalties for failure to meet any other requirements of this Consent Decree (with the exception of the failure to complete the Supplemental Environmental Project as set forth in Appendix C that is subject to penalties pursuant to Paragraph 18) as follows:

- \$250 per day per violation for the first 30 days, \$500 per day per violation for the following 30 days, and \$ 1,000 per day per violation for each day thereafter.

13. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final date of completion even if no notice of the violation is sent to the Government of Guam. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of the Consent Decree.

14. Any stipulated penalty accruing pursuant to this Consent Decree shall be payable upon demand and due not later than THIRTY (30) days after the Government of Guam's receipt

U. S. EP A's written demand. Stipulated penalties shall be paid by certified or cashier's check the amount due, shall be made payable to the "U.S.Department of Justice," referencing DOJ 90-5-1-1-06658andUSA0 File Number 1998V00094, and shall be delivered by certifiedmail dh return receipt requested to:

United States Attorney, District of Guam  
Attention: Financial Litigation Unit  
Suite 500, Sirena Plaza  
108Hernan Cortez  
Hagatna, Guam 96910

Concurrently with making the payment, Defendant shall send notice of payment to U.S. EPA and DOJ, directed to the addresses provided in Section XI (Notification). The notice of payment shall also identify: (i) the specific provision of this Section VI (Stipulated Penalties) related to such payment, and (ii) a description of the violation(s) of this Consent Decree for which the stipulated penalties or interest are being tendered.

15. If the Government of Guam fails to pay stipulated penalties owed pursuant to this Consent Decree within THIRTY (30) days of receipt of U.S. EPA's written demand, the Government of Guam shall pay interest on the late payment for each day after the initial thirty day due date. The rate of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. 3 1961.

16. Stipulated penalties are not the Plaintiffs exclusive remedy for violations of this Consent Decree. The United States expressly reserves the right to seek any other relief it deems appropriate, including, but not limited to, action for statutory penalties, contempt, or injunctive relief against the defendant.

## **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

17. In partial satisfaction of Plaintiffs claims, the Government of Guam shall perform and complete the Supplemental Environmental Project ("SEP") set forth in Appendix C, which has the objective of securing significant environmental or public health protection and improvements. The Government of Guam shall complete the SEP in accordance with the

1 schedule and requirements set forth in Appendix C. The SEP shall be completed within four  
2 years after the date of entry of this Consent Decree. The SEP shall develop and implement a  
3 comprehensive waste diversion strategy for household hazardous waste on Guam.

4 18. The total expenditure for the SEP shall be not less than the present value of  
5 \$1,000,000. The Government of Guam shall include documentation of the expenditures made in  
6 connection with the SEP as part of the SEP Completion Report described in Paragraph 21 below.  
7 In the event that the Government of Guam fails to perform and complete the SEP as set forth in  
8 Appendix C, it shall, in the same manner as set forth in Paragraph 14, pay a civil penalty to the  
9 United States equal to the difference between the sum of \$ 1,000,000 and the total SEP costs that  
10 the Government of Guam has incurred and itemized according to the requirements set forth in  
11 Paragraph 21.

12 19. The Government of Guam is responsible for the satisfactory completion of the SEP  
13 in accordance with the requirements of this Decree. The Government of Guam may use  
14 contractors and/or consultants in planning and implementing the SEP.

15 20. The Government of Guam hereby certifies that, as of the date of this Consent  
16 Decree, it is not required by any federal, state or local law or regulation to perform or develop the  
17 SEP, nor is the Government of Guam required by agreement, grant or as injunctive relief in this or  
18 any other case to perform or develop the SEP. The Government of Guam further certifies that it  
19 has not received, and is not presently negotiating to receive, credit in any other enforcement action  
20 for the SEP; nor will the Government of Guam realize any profit attributable to or associated with  
21 the SEP, or receive any reimbursement for any portion of the SEP from any other person.

22 21. SEP Completion Report. The Government of Guam shall complete the SEP within  
23 four years after the date of entry of this Consent Decree. The Government of Guam shall submit a  
24 SEP Completion Report to the United States within ninety (90) days after completion of the SEP.

25 The SEP Completion Report shall contain the following information:

26 a. A detailed description of the SEP as implemented;

- b. A description of any implementation problems and the solutions thereto;
- c. An itemization of all SEP costs and acceptable evidence of such costs;
- d. Certification that the SEP has been completed pursuant to the provisions of this Consent Decree, including Appendix C;
- e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reduction to the extent feasible); and
- f. Copies of any training materials, brochures, databases, or software relating to the SEP.

22. Periodic Reports. While the SEP is being planned and implemented, the Government of Guam shall submit quarterly reports to U.S. EPA describing the progress of the SEP within twenty-one (21) days after the end of each Calendar Quarter.

23. Following receipt of the SEP Completion Report described in Paragraph 21 above, U.S. EPA will do one of the following in writing:

- a. Accept the SEP Completion Report; or
- b. Reject the SEP Completion Report, notifying Government of Guam in writing of deficiencies in the SEP Completion Report. If U.S. EPA rejects SEP Completion Report, the Government of Guam shall have thirty (30) days from the date of receipt of U. S.

EPA's notice in which to correct any deficiencies and submit a revised SEP Completion Report. If U.S. EPA rejects a revised SEP Completion Report, it shall notify the Government of Guam about the rejection. The Government of Guam shall be subject to stipulated penalties in accordance with Paragraph 12(c) herein for each day after receipt of U.S. EPA's notice of rejection of the revised SEP Completion Report until an acceptable SEP Completion Report is submitted to U. S. EPA.

24. If U.S. EPA rejects the SEP Completion Report pursuant to Paragraph 23(b), U.S. EPA shall permit the Government of Guam the opportunity to object in writing to the notification



1 deficiency within ten (10) days of receipt of such notification. U.S. EPA and the Government  
2 Guam shall have an additional thirty (30) days from the receipt by U.S. EPA of the notification  
3 objection to reach agreement relating to U.S. EPA's notice of deficiency. If agreement cannot  
4 reached on any issue in the notice of deficiency within this thirty (30) day period, U.S. EPA  
5 shall thereafter provide a written statement of its decision to the Government of Guam, which  
6 decision shall be final and binding. Any such decision shall not be subject to Dispute Resolution.  
7 The Government of Guam agrees to comply with any SEP-related requirements imposed by U.S.  
8 EPA's written decision.

9 25. If upon receipt of the SEP Completion Report, U.S. EPA determines in its sole  
10 discretion that part or all of the SEP has not been implemented in accordance with this Consent  
11 Decree, including Appendix C, and any statements of work, U.S. EPA may require the  
12 Government of Guam: (1) to repeat any deficient tasks; or (2) if specific tasks set forth in  
13 Appendix C were not performed at all, to perform such tasks. U.S. EPA shall provide any such  
14 requirement to the Government of Guam in writing.

15 26. The Government of Guam bears the burden of segregating eligible SEP costs from  
16 costs not eligible for SEP credit. Any non-segregable cost evidence (i.e., containing both eligible  
17 SEP costs and costs not eligible for SEP credit) shall be disallowed in its entirety. "Acceptable  
18 evidence" includes invoices, purchase orders, or other documentation that specifically identifies  
19 and itemizes the individual costs of the goods or services for which payment is made. Cancelled  
20 drafts are not acceptable evidence unless such drafts specifically identify and itemize the  
21 individual costs of the goods or services for which payment is made. Each submission required  
22 under this Section shall be signed by **an** official with knowledge of the SEP **and** shall bear the  
23 certification language set forth in Paragraph 42 below.

24 27. The Government of Guam hereby agrees that if, in estimating the cost of the SEP,  
25 did not subtract the estimated savings achieved from deducting the cost of each SEP in  
26 calculating state and federal taxes, any funds expended by the Government of Guam in the  
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1 )performance of each SEP shall not be deductible for purposes of such taxes. The Government of  
2 Guam, at the time of completion of the SEP, shall submit to the United States written certification  
3 that any funds expended in the performance of each SEP have not been and will not be deducted  
4 for purposes of such taxes.

5 28. In the event the Government of Guam does not spend the present value attributed  
6 to a SEP pursuant to Paragraph 18 above, the Government of Guam shall perform additional work  
7 on the SEP, as set forth in Appendix C, such that the total expenditures on the SEP equals or  
8 exceeds the required present value of the SEP. If the Government of Guam performs the  
9 additional work as required by this Paragraph, it shall not be subject to the civil penalty set out in  
10 Paragraph 18.

11 29. Any public statement, oral or written, in print, film, or other media made by the  
12 Government of Guam making reference to the SEP shall include the following language, "This  
13 project was undertaken in connection with the settlement of a civil enforcement action taken by  
14 the United States for violations of the Clean Water Act."

#### 15 **VIII. RIGHT OF ENTRY**

16 30. U. S. EPA and its contractors and consultants shall have the authority to enter Ordot  
17 dump and any facility related to the SEP at all reasonable times, upon proper presentation of  
18 credentials. This provision in no way limits or otherwise affects any right of entry held by U.S.  
19 EPA pursuant to applicable federal or territorial laws, regulations, or permits.

#### 20 **IX. FORCE MAJEURE**

21 31. The Government of Guam shall perform all requirements of this Consent Decree in  
22 accordance with the time schedules set forth except to the extent, and for the period of time, that  
23 such performance is prevented or delayed by events which constitute a force majeure. The  
24 schedule set forth in Paragraph 9 above for the construction of a new municipal solid waste  
25 landfill is not based on, or dependent upon, the existence of any contractual arrangements the  
26 Government of Guam may or may not have, now or in the future, for the construction and  
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1 peration of a new landfill or incinerator.

2 32. For the purposes of this Consent Decree, a force majeure is defined as any event  
3 arising from causes beyond the control of the Government of Guam and that cannot be overcome  
4 by diligent and timely efforts of the Government of Guam, including its contractors. Economic  
5 hardship, normal inclement weather, and increased costs of performance shall not be considered  
6 events beyond the reasonable control of the Government of Guam for purposes of determining  
7 whether an event is force majeure. The requirement that the Government of Guam exercise  
8 diligent and timely efforts to fulfill its obligations includes using best efforts to anticipate any  
9 force majeure event and best efforts to address the effects of any potential force majeure event  
10 (1) as it is occurring and (2) following the potential force majeure events, such that delay is  
11 minimized to the greatest extent possible.

12 33. In the event of a force majeure, the time of performance of the activity delayed by  
13 the force majeure shall be extended by U.S. EPA for the time period of the delay attributable to  
14 the force majeure. An extension of one compliance date based on a particular incident does not  
15 necessarily result in an extension of a subsequent compliance date or dates. The Government of  
16 Guam must make an individual showing of proof regarding each delayed incremental step or other  
17 requirement for which an extension is sought. The Government of Guam shall adopt all  
18 reasonable measures to avoid or minimize any delay caused by a force majeure.

19 34. When an event occurs or has occurred that may delay or prevent the performance  
20 of any obligation under this Consent Decree, the Government of Guam shall notify by telephone  
21 the Manager, Pacific Islands Office, Region 9, (415) 972-3774, or the Guam Program Manager,  
22 Pacific Islands Office, Region 9, (415) 972-3770, within 72 hours of Government of Guam's  
23 knowledge of such event. Telephone notification shall be followed by written notification made  
24 within SEVEN (7) days of Government of Guam's knowledge of the event. The written  
25 notification shall fully describe: the event that may delay or prevent performance; reasons for the  
26 delay; the reason the delay is beyond the reasonable control of the Government of Guam if Guam  
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1 believes the event constitutes a force majeure; the anticipated duration of the delay; actions taken  
2 to be taken to prevent or minimize the delay; a schedule for implementation of any measures to  
3 be taken to mitigate the effect of the delay; and the time needed to implement any dependent  
4 activities. For purposes of this Section, the Government of Guam shall be deemed to have  
5 knowledge of anything it or its contractors knew or should have known.

6 35. Failure of the Government of Guam to comply with the force majeure notice  
7 requirements provided in Paragraph 34 for any delay in performance will be deemed an automatic  
8 forfeiture of its right to assert that the delay was caused by a force majeure.

9 36. After receiving written notification from the Government of Guam of a force  
10 majeure, U.S. EPA shall determine whether the Government of Guam's request for delay is  
11 justified and U. S. **EPA** shall notify the Government of Guam of its determination in writing. U. S.  
12 **EPA**'s failure to respond within THIRTY (30) days to a request for delay by the Government of  
13 Guam shall be deemed a denial of that request. If the Government of Guam disagrees with U.S.  
14 **EPA**'s determination, the Government of Guam may initiate dispute resolution procedures  
15 pursuant to Section X (Dispute Resolution).

16 37. The Government of Guam shall bear the burden of proving that any delay or  
17 violation of any requirement of this Consent Decree was caused by circumstances beyond its  
18 control, or any entity under its control, including consultants and contractors, and that the  
19 Government of Guam could not have reasonably foreseen and prevented such violation. The  
20 Government of Guam shall also bear the burden of proving the duration and extent of any delay or  
21 violation attributable to such circumstances.

## 22 **X. DISPUTE RESOLUTION**

23 38. The Dispute Resolution procedures of this Section shall be the exclusive  
24 mechanism to resolve disputes arising under or with respect to the Consent Decree. However, the  
25 procedures set forth in this Section shall not apply to actions by the United States to enforce  
26 obligations by the Government of Guam under this Consent Decree that have not been disputed in  
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ccordance with this Section.

39. If the Government of Guam disputes any determination made by U.S. EPA under this Consent Decree, the Government of Guam shall send a written notice to U.S. EPA and DOJ outlining the nature of the dispute, submitting all supporting information and document relating to the dispute, describing its proposed resolution, and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond FIFTEEN (15) days from the date when notice was received by U.S. EPA and DOJ unless the parties agree otherwise in writing.

40. If the informal negotiations are unsuccessful, the disputed determination by U. S. EPA shall control, unless the Government of Guam files a motion with this Court for dispute resolution. Any such motion must be filed within TWENTY (20) days after termination of informal negotiations and must be concurrently sent to U. S. EPA and DOJ. The United States shall then have THIRTY (30) days to respond to the Government of Guam's motion. In any such dispute resolution proceeding, the Government of Guam bears the burden of proving that U.S. EPA was arbitrary and capricious.

## **XI. NOTIFICATION**

41. Except as otherwise specifically stated, all notices and submissions from the Government of Guam to U.S. EPA required by this Consent Decree shall be sent via express mail or similar service with a return receipt requested, or, in the alternative, by both fax and e-mail, and addressed to:

Manager, Pacific Islands Office (CMD-6)  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Fax: (415)947-3560  
e-mail: machol.ben@epa.gov

42. All notices and submissions to U.S. EPA shall be signed and affirmed by a responsible official of the Government of Guam using the following certification

statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

43. All notices and submissions to the Government of Guam required by this Consent Decree shall be sent to:

Attorney General of Guam  
Guam Judicial Center, Suite 2-200E  
120 West O'Brien Drive  
Hagatna, Guam 96910  
Fax: (671)472-2493  
e-mail: law@mail.justice.gov.gu

Director, Department of Public Works  
542 North Marine Drive  
Tamuning, Guam 96911  
Fax: (671)649-6178  
e-mail: dpwdir@mail.gov.gu

Administrator, Guam Environmental Protection Agency  
15-6101 Mariner Avenue  
Tiyan, Guam 96913  
Fax: (671)477-9402  
e-mail: fcastro@guamepa.govguam.net

44. All notices and submissions to DOJ required by this Consent Decree shall be sent to:

1 United States Attorney  
2 District of Guam  
3 Sirena Plaza  
4 108 Heman Cortez Ave., Suite 500  
5 Hagatna, Guam 96910  
6 Fax: (671)472-7215  
7 e-mail: mikel.schwab@usdoj.gov  
8  
9 Section Chief, Environmental Enforcement Section  
10 D.J. Ref 90-5-1-1-06658 (Mullaney)  
11 U.S. Department of Justice  
12 301 Howard Street, Suite 1050  
13 San Francisco, CA 94105  
14 Fax: (415)744-6476  
15 e-mail: robert.mullaney@usdoj.gov

## 9 XII. MISCELLANEOUS

10 45. Entry of this Consent Decree and compliance with the requirements herein shall be  
11 a full settlement and satisfaction of the civil judicial claims of the United States against the  
12 Government of Guam as alleged in the Complaint filed in this action through the date of the  
13 signing of this Consent Decree. This Consent Decree in no way relieves the Government of  
14 Guam of any criminal liability.

15 46. Nothing in this Consent Decree shall limit the ability of the United States to  
16 enforce any and all provisions of applicable federal laws and regulations for any violations  
17 unrelated to the claims in the Complaint or for any future events that occur after the date of  
18 signing of this Consent Decree.

19 47. The United States does not guarantee that implementing the relief described in this  
20 Consent Decree will ensure compliance with the Clean Water Act. This Consent Decree in no  
21 way affects the Government of Guam's responsibilities to comply with all applicable federal and  
22 territorial laws and regulations.

23 48. Except as specifically provided herein, the United States does not waive any rights  
24 or remedies available to it for any violation by the Government of Guam of federal and territorial  
25 laws and regulations.

26 49. Except as provided herein, each party shall bear its own costs and attorney's fees in  
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1 This action. Should the Government of Guam subsequently be determined to have violated the  
2 terms and conditions of this Consent Decree, then the Government of Guam shall be liable to the  
3 United States for any costs and attorney's fees incurred by the United States in any actions against  
4 for noncompliance with this Consent Decree.

5 50. This Consent Decree contains the entire agreement between the parties and no  
6 statement, promise, or inducement made by any of the parties or agent of the parties that is not  
7 contained in this written Consent Decree shall be valid or binding, and this Consent Decree may  
8 not be enlarged, modified, or altered except by using procedures described in this Consent Decree.

9 51. The Attorney General of the Government of Guam and the Assistant Attorney  
10 General for Environmental and Natural Resources Division of the Department of Justice each  
11 certify that he is fully authorized to enter into the terms and conditions of this Consent Decree, to  
12 execute the document, and to legally bind the party he represents to this document.

13 52. The Government of Guam shall identify, on the attached signature page, the name,  
14 address and telephone number of an agent who is authorized to accept service of process by mail  
15 on behalf of that party with respect to all matters arising under or relating to this Consent Decree.  
16 The Government of Guam hereby agrees to accept service in that manner and to waive the formal  
17 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any  
18 applicable local rules of this Court, including, but not limited to, service of summons.

### 19 **XIII. RECORD RETENTION**

20 53. In addition to any state or federal requirements relating to record retention, the  
21 Government of Guam shall retain at least one legible copy of all records, documents, reports or  
22 plans required by its permit or which relate to its performance under any provision of this Consent  
23 Decree and any documentation which the Government of Guam relied on in preparing such  
24 records, documents, reports or plans, for a period of five (5) years from the date of such record,  
25 document, report, or plan, or underlying documentation, or until two (2) years after termination of  
26 this Consent Decree, whichever is later.



1 54. Not less than sixty (60) days prior to destruction of any reports or documents  
2 created pursuant to the requirements of this Consent Decree and any documents used to create  
3 such submittals, the Government of Guam shall notify the U.S. EPA and DOJ in writing, as  
4 provided in Section XI, that destruction of documents is planned and make such records available  
5 to the United States for inspection, copying or retention. This notification will identify the nature  
6 of the documents and their storage location or locations. The Government of Guam shall not  
7 claim that any such reports or documents are confidential or privileged.

8 55. Within fifteen (15) days of a written request from the United States, the  
9 Government of Guam shall provide the United States with copies of the documentation  
10 underlying any document, report or plan submitted pursuant to this Consent Decree, or any  
11 documents, reports or plans retained pursuant to Paragraph 53.

#### 12 **XIV. TERMINATION**

13 56. This Consent Decree shall remain in effect until the later of: (1) one year after the  
14 Government of Guam completes all activities contained in Sections 111, IV, and VII; or (2) the  
15 resolution of any matters pending in this Court regarding this Consent Decree.

16 57. If the Government of Guam believes that the requirements of Paragraph 56 have  
17 been met, the Government of Guam may request that the United States make a determination that  
18 this Consent Decree may be terminated. Any such request shall be in writing and include a  
19 certification that the applicable requirements have been met.

20 58. If the United States agrees that the requirements of Paragraph 56 have been met,  
21 the United States will notify the Government of Guam and the Court that the Consent Decree has  
22 been terminated.

23 59. Until termination of this Consent Decree, the Court shall retain jurisdiction to  
24 handle any disputes that arise under this Consent Decree.

25 60. The parties agree to the foregoing Consent Decree and agree that the Consent  
26 Decree may be entered upon compliance with the public notice procedures set forth at 28 C.F.R.

1 50.7, which states that the public shall have THIRTY (30) days to comment on this Consent  
2 Decree, and upon notice to this Court from DOJ requesting entry of this Consent Decree. The  
3 United States reserves its right to withdraw consent to this Consent Decree based upon comments  
4 received during the public notice period. The Government of Guam consents to entry of this  
5 Consent Decree without further notice to the Court.

#### 6 **XV. MODIFICATION**

7 61. There shall be no material modifications of this Consent Decree without the  
8 written approval of the parties to this Consent Decree and the approval of the Court. All non-  
9 material modifications, which may include extensions of the time frames and schedules for  
10 performance of the terms and conditions of this Consent Decree and certain modifications to the  
11 attachments, may be made by agreement of the parties and shall be effective upon filing by the  
12 United States of such modifications with the Court.

#### 13 **XVI. FINAL JUDGMENT**

14 62. Upon approval and entry of this Consent Decree by the Court, the Consent Decree  
15 shall constitute a final judgment pursuant to Federal Rules of Civil Procedure 54 and 58.

#### 17 **ORDER**

18 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

20 \_\_\_\_\_  
21 United States District Judge  
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1 For the United States of America, Plaintiff:

2

3 Dated: 11/11/11

4 /s/ Thomas L. Mangoni  
5 Assistant Attorney General  
6 Environment & Natural Resources Division  
7 ROBERT D. MULLANEY  
8 Environmental Enforcement Section  
9 Environment & Natural Resources Division  
10 United States Department of Justice

11 LEONARD M. RAPADAS  
12 Districts of Guam and NMI  
13 United States Attorney  
14 (671)472-7332

15 Dated: \_\_\_\_\_

16 MIKEL W. SCHWAB  
17 Assistant U.S. Attorney

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Dated: \_\_\_\_\_

\_\_\_\_\_  
JOHN PETER SUAREZ  
Assistant Administrator  
for Enforcement  
U.S. Environmental Protection Agency

Dated: \_\_\_\_\_

\_\_\_\_\_  
WAYNE NASTRI  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 9

IF COUNSEL:

ULIA JACKSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
15 Hawthorne Street  
San Francisco, CA 94105

1 For the Government of Guam, Defendant:

2  
3 dated: \_\_\_\_\_

\_\_\_\_\_  
DOUGLAS B. MOYLAN  
Attorney General of Guam  
Guam Judicial Center, Suite 2-200E  
120 West O'Brien Drive  
Hagatna, Guam 96910  
(671)475-3324

7  
8 )ated: \_\_\_\_\_

\_\_\_\_\_  
FELIX P. CAMACHO  
Governor of Guam

10  
11 )ated: \_\_\_\_\_

\_\_\_\_\_  
JOSE MORCILLA, JR.  
Interim Director, Department of Public Works

13  
14 dated: \_\_\_\_\_

\_\_\_\_\_  
FRED CASTRO  
Administrator  
Guam Environmental Protection Agency

16  
17 Agent for service of process:

18 Douglas B. Moylan  
Attorney General of Guam  
Guam Judicial Center, Suite 2-200E  
20 West O'Brien Drive  
Hagatna, Guam 96910  
671) 475-3324